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KHAIRY JAMALUDDIN v. DATO' SERI ANWAR IBRAHIM

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
ZALEHA YUSOF JCA
ZABARIAH MOHD YUSOF JCA
B
[CIVIL APPEAL NO: W-02(W)-2061-10-2017]
1 MARCH 2018

C ***CIVIL PROCEDURE:*** *Appeal – Notice of appeal – Preliminary objection – Two separate orders sealed and issued by High Court – Whether separate notices of appeal should have been filed by virtue of Rules of the Court of Appeal 1994 – Whether single notice of appeal defective – Whether notice of appeal ambiguous and uncertain*

D ***CIVIL PROCEDURE:*** *Striking out – Notice of appeal – Application for – Whether separate notices of appeal should have been filed by virtue of Rules of the Court of Appeal 1994 – Whether single notice of appeal defective – Whether notice of appeal ambiguous and uncertain*

E F G H I The respondent filed an action in the High Court against the appellant alleging that the appellant had uttered words that were slanderous of the respondent. After all the witnesses for the respondent and the appellant completed their testimonies, the appellant, *vide* encl. 129, applied to amend the statement of defence to include the defence of fair comment. The trial judge delivered his decision encompassing both the application to amend the statement of defence and the respondent's claim for defamation ('the decisions'). The trial judge found that the amendment, if allowed at such late stage, would be prejudicial to the respondent. As for the respondent's claim, the trial judge found that the statement was defamatory of the respondent and that the appellant had not made out any of the pleaded defences. Two separate orders were sealed and issued by the High Court, one, in respect of encl. 129, and the other, in respect of the judgment for the main trial. Aggrieved by the decisions of the High Court, the appellant filed the present appeal. The respondent, however, raised an objection by way of a preliminary objection and/or a notice of motion that the appellant's notice of appeal was defective and bad in law on the grounds that (i) separate notices of appeal should have been filed by virtue of the procedural rules as set out under the Rules of the Court of Appeal 1994; and (ii) the notice of appeal was ambiguous and it was uncertain as to whether it covered the appeal in respect of encl. 129. Relying on the case of *Deepak Jaikishan v. A Santamil a/p Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam a/l Perumal, deceased) & Ors* and the case of *A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v. Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors,* it was argued for the respondent that since there were two distinct orders of the High Court, the appellant ought to have filed two separate notices of appeal. Hence, *vide* encl. 3, the respondent applied to strike out appellant's notice of appeal.

Held (allowing respondent's application)
Per Tengku Maimun Tuan Mat JCA delivering the judgment of the court:

(1) In the case of *A Santamil Selvi*, leading to the case of *Deepak Jaikishan*, there were eight separate applications by eight different respondents, whilst in the present case, there was only one interlocutory application and a main trial involving the same appellant and the same respondent. Nevertheless, the principle to be distilled from the decision of the Federal Court in *Deepak Jaikishan*, was not so much about the number of applications or the number of parties but whether there was a distinct and separate application resulting in a distinct and separate order by the court. If there was a distinct and separate application and a distinct and separate order of the court, then, there ought to be a separate notice of appeal filed in respect of the separate and distinct order appealed against. (paras 31 & 32)

(2) In the instant case, there were two separate orders issued by the court, namely, an order in respect of the main trial where judgment was entered in favour of the respondent and another order in respect of the dismissal of the appellant's interlocutory application to amend the defence. Hence, this application fell squarely within the principle enunciated by the Federal Court in *Deepak Jaikishan*, which the present court was bound to follow by virtue of the doctrine of *stare decisis*. Therefore, the notice of appeal was bad in law due to the appellant's' failure to file separate notices of appeal and to set out the details of each and every one of the decisions appealed against. (paras 33, 34 & 38)

(3) There was in fact some ambiguity as to whether the appellant was also appealing against the dismissal of the application to amend the statement of defence because, whilst the notice of appeal stated that the appellant was not satisfied with the whole decision of the judge, it made no mention that the appellant wished to appeal against the dismissal of encl. 129. The particulars on the dismissal of the application to amend was conspicuously absent in the notice of appeal as being the decision appealed against, as opposed to the main trial where the appellant had set out the particulars of the judgment appealed against. (paras 35 & 36)

Bahasa Malaysia *Headnotes*

Responden memfailkan tindakan di Mahkamah Tinggi terhadap perayu dengan dakwaan bahawa perayu telah menyebut perkataan-perkataan yang memfitnah responden. Selepas semua saksi responden dan perayu memberi testimoni mereka, perayu, melalui lampiran 129, memohon untuk meminda pernyataan pembelaan untuk memasukkan pembelaan komen berpatutan. Hakim bicara menyampaikan keputusannya yang meliputi permohonan untuk meminda pernyataan pembelaan dan tuntutan responden untuk fitnah ('keputusan'). Hakim bicara mendapati bahawa jika pindaan dibenarkan pada

peringkat akhir, responden akan diprejudiskan. Bagi tuntutan responden, hakim bicara mendapati bahawa kenyataan yang diucapkan adalah fitnah terhadap responden dan bahawa perayu tidak berjaya membuktikan sebarang pembelaan yang dikemukakan. Dua perintah berasingan dimeterai dan dikeluarkan oleh Mahkamah Tinggi, satu berkenaan lampiran 129, dan satu lagi, berkenaan penghakiman perbicaraan utama. Terkilan dengan keputusan Mahkamah Tinggi, perayu memfailkan rayuan ini. Walau bagaimanapun, responden membangkitkan bantahan melalui bantahan awal dan/atau notis usul, bahawa notis rayuan perayu adalah cacat dan tidak sah dari segi undang-undang kerana (i) notis rayuan berasingan sepatutnya difailkan berdasarkan kaedah prosedur yang ditetapkan di bawah Kaedah-Kaedah Mahkamah Rayuan 1994; dan (ii) notis rayuan adalah kabur dan tidak pasti sama ada ia merangkumi rayuan berkenaan lampiran 129. Bersandarkan kes *Deepak Jaikishan v. A Santamil Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam Perumal, deceased) & Ors* dan kes *A Santamil Selvi Alau Malay @ Anna Malay & Ors v. Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors*, adalah dihujahkan bagi pihak responden bahawa oleh kerana terdapat dua perintah yang berbeza dari Mahkamah Tinggi, perayu sepatutnya memfailkan dua notis rayuan berasingan. Oleh itu, melalui lampiran 3, responden memohon membatalkan notis rayuan perayu.

Diputuskan (membenarkan permohonan responden)
Oleh Tengku Maimun Tuan Mat HMR menyampaikan penghakiman mahkamah:

(1) Dalam kes *A Santamil Selvi*, yang membawa kepada kes *Deepak Jaikishan*, terdapat lapan permohonan berasingan oleh lapan responden yang berlainan manakala dalam kes ini, terdapat hanya satu permohonan interlokutori dan perbicaraan utama yang melibatkan perayu yang sama dan responden yang sama. Walau bagaimanapun, prinsip harus diikuti daripada keputusan Mahkamah Persekutuan dalam kes *Deepak Jaikishan*, bukan mengenai bilangan permohonan atau bilangan pihak tetapi, sama ada terdapat permohonan yang berbeza dan berasingan bagi perintah yang berbeza dan berasingan oleh mahkamah. Sekiranya terdapat permohonan yang berbeza dan berasingan serta perintah mahkamah yang berbeza dan berasingan, maka harus ada notis rayuan berasingan yang difailkan bagi rayuan terhadap perintah yang berbeza dan berasingan tersebut.

(2) Dalam kes ini, terdapat dua perintah berasingan yang dikeluarkan oleh mahkamah, iaitu perintah berkenaan dengan perbicaraan utama di mana penghakiman dibuat memihak kepada responden dan perintah berkenaan dengan pembatalan permohonan interlokutori perayu untuk meminda pembelaan. Justeru, permohonan ini terangkum dalam prinsip

yang ditentukan oleh Mahkamah Persekutuan dalam kes *Deepak Jaikishan*, di mana mahkamah ini terikat dengan pematuhan berikutan doktrin *stare decisis*. Oleh itu, notis rayuan perayu adalah cacat dari segi undang-undang kerana kegagalan perayu memfailkan notis rayuan berasingan dan menyatakan butir-butir berasingan bagi setiap keputusan yang dirayu.

(3) Terdapat beberapa kesamaran sama ada perayu juga merayu terhadap pembatalan permohonan untuk meminda pernyataan pembelaan kerana, notis rayuan sementara menyatakan bahawa perayu tidak berpuas hati dengan keseluruhan keputusan hakim bicara, ia tidak menyebut bahawa perayu ingin merayu terhadap pembatalan lampiran 129. Butir-butir mengenai pembatalan permohonan untuk meminda tidak dapat dilihat secara jelas dalam notis rayuan sebagai keputusan yang dirayu, berbanding perbicaraan utama di mana perayu telah menetapkan butir-butir penghakiman yang dibuat terhadapnya.

Case(s) referred to:

A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors [2015] 4 CLJ 1016 CA ***(refd)***

Deepak Jaikishan v. A. Santamil Selvi Alau Malay & Ors [2017] 5 CLJ 641 FC ***(foll)***

Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal [2015] 8 CLJ 1 FC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 18 r. 19(1)

Rules of the Court of Appeal 1994, rr. 3A, 5(3), (4), First Schedule Form 1

For the appellant - Muhammad Shafee Abdullah & Sarah Abishegam; M/s Shafee & Co
For the respondent - R Sivarasa & Leela Jesuthasan; M/s Chambers of Leela J

[Editor's note: For the High Court judgment, please see Dato' Seri Anwar Ibrahim v. Khairy Jamaluddin [2018] 3 CLJ 250 (appeal struck out).]

Reported by Sandra Gabriel

JUDGMENT

Tengku Maimun Tuan Mat JCA:

[1] This notice of motion encl. (3) ("the application") was filed by the respondent/plaintiff to strike out the appellant's/defendant's notice of appeal dated 9 October 2017 ("the notice of appeal").

Background

[2] The respondent filed an action in the High Court at Kuala Lumpur against the appellant alleging that the appellant had uttered words that are slanderous of the respondent. The words were uttered on 19 February 2008 at one of the launches of the political campaign for Malaysia's 12th General Election. This was what was said by the appellant:

A Saya rasa meluat bila saya tengok tiap-tiap kali sebelum pilihanraya, parti pembangkang bergabung. Sebelum tahun '99 pilihan raya bergabung, Barisan Alternatif, lepas tu cerai. Tahun 2004 sebelum pilihan raya bergabung, selepas itu cerai. Tahun 2008 saya dengar nak bergabung sekali lagi, confirm lepas ini akan cerai. Dalam Barisan Nasional, UMNO, MCA, MIC, Gerakan, PPP, kita kahwin selama-lamanya. Kita tidak pernah cerai.
B Kita kahwin pada tahun 1955 dengan MCA dengan MIC, sampai hari ini kita tak cerai. Tapi pembangkang ini saudara-saudara, mungkin Dato' Norza tahu istilah ini, pembangkang ini dia kahwin muta'ah. Kahwin muta'ah ini saudara-saudara, mazhab Syiah, dia mengamalkan kahwin muta'ah. Dia kahwin satu malam, dia main malam tu, esok hari dia cerai, untuk menghalalkan maksiat. Parti pembangkang ini dia kahwin muta'ah.
C Dia kahwin, PAS main DAP ikut kiri, DAP main PAS ikut kanan, Anwar main dua-dua ikut belakang, lepas tu, bila kalah, dia cerai. Ini bukan masa depan kita saudara-saudara.

[3] The media who were in attendance recorded the speech which was subsequently reported by the news portal Malaysiakini. A video clip of the
D speech was also subsequently uploaded onto Malaysiakini's online news channel known as KiniTV.

[4] The appellant pleaded the defence of justification, partial justification and fair comment. The appellant had also raised the defence of estoppel.

E **[5]** The case went for full trial and after all the witnesses for the respondent and the appellant completed their testimonies, the appellant, *vide* encl. 129 applied to amend the statement of defence to include the defence of fair comment.

[6] The learned trial judge gave the following directions in respect of the
F application for amendment:

Address it in your main submission. Address all the defences that you propose to raise, whether I approve it or not, that is something that I would deliver in my ultimate decision … In other words, address your arguments why I ought to allow the amendment to the defence okay?
G One, and then address your main arguments as though I have allowed your amended defence. Okay, and then I will deal with all the possible permutations, so that in the event that an appeal becomes necessary or desirable for the parties, then we will not be faced with the situation where an appellate court disagrees with my findings, then they will remit the case back for retrial. Then the appellate court can itself make that
H decision based on the facts that all arguments have been fully ventilated. Because we've had situations where much time has been wasted by cases going up and down when in fact they ought to have been addressed a bit more efficiently.

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[7] On 29 September 2017, the learned trial judge delivered his decision encompassing both the application to amend the statement of defence and the respondent's claim for defamation ("the decisions"). A

[8] In his grounds of judgment, the learned judge gave two reasons why the application to amend the statement of defence *vide* encl. 129 was dismissed. Firstly, the appellant had not adequately justified the delay in making the application to amend (see *Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal* [2015] 8 CLJ 1). Secondly, in order to establish fair comment, the appellant must have had an honest belief that the statements were true. And because the amendment was made after trial had completed, the respondent has been denied the opportunity to cross-examine the appellant on his state of mind. In other words, the learned judge found that the amendment, if allowed at such late stage, would be prejudicial to the respondent. B C

[9] As for the respondent's claim, His Lordship found that it was not in dispute that there had been publication of the statement complained of and that the statement referred to the respondent. The learned judge further found that the statement was defamatory of the respondent and that the appellant had not made out any of the pleaded defences. Judgment was therefore entered for the respondent in the following terms: D E

(a) The defendant is to pay compensatory damages of RM150,000 to the plaintiff;

(b) The plaintiff's claims for aggravated and compensatory damages are dismissed;

(c) The defendant is to further compensate the plaintiff for an amount determined at a rate of 4% per annum on the judgment sum from 19 February 2008 until 29 September 2017; F

(d) The defendant will also be liable to the plaintiff for an amount determined at a rate of 5% per annum on the sum of the amounts referred to in sub-paras. (a) and (c) above remaining unpaid from 30 September 2017 until full satisfaction; and G

(e) Costs in the amount of RM60,000 for the proceedings before the High Court and a sum of RM5,000 for the prior proceedings before the Federal Court. H

[10] Two separate orders were sealed and issued by the High Court, one in respect of encl. 129 and the other in respect of the judgment for the main trial.

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[11] Aggrieved by the decisions of the High Court, on 9 October 2017, the appellant filed an appeal to this court. The notice of appeal states:

> SILA AMBIL PERHATIAN bahawa Khairy Jamaluddin, Perayu/Defendan yang dinamakan di atas yang tidak berpuas hati dengan keseluruhan keputusan Yang Arif Tuan Azizul Azmi bin Adnan yang diberikan di Mahkamah Tinggi di Kuala Lumpur pada 29haribulan September 2017, termasuk (tetapi tidak terhad) kepada Kandungan 129 (permohonan defendan untuk meminda "Pembelaan Terpinda Semula" bertarikh 11.2.2016, yang difailkan pada 14.3.2017), dengan ini merayu kepada Mahkamah Rayuan terhadap keseluruhan keputusan tersebut di mana tuntutan plaintif telah dibenarkan dengan:
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> 1) Gantirugi pampasan sebanyak RM 150,000.00 dibayar oleh defendan kepada plaintif;
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> 2) Faedah ke atas jumlah Penghakiman pada kadar 4% setahun dari 19.02.2008 sehingga 29hb September 2017;
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> 3) Faedah ke atas jumlah Penghakiman pada kadar 5% setahun dari 30.09.2017 sehingga tarikh penyelesaian penuh;
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> 4) Kos tindakan ini sebanyak RM 60,000.00.

[12] By a letter dated 9 November 2017, the respondent's solicitors gave notice to the appellant's solicitors that the respondent will be raising objection by way of preliminary objection and/or a notice of motion, that the appellant's notice of appeal is defective and bad in law. The objection was premised on the grounds that a single notice of appeal covers both the decision after trial and a separate and distinct interlocutory amendment application, when separate notices of appeal should have been filed by virtue of the procedural rules as set out under the Rules of the Court of Appeal 1994 ("RCOA"); and that the notice of appeal is ambiguous and it is uncertain as to whether it covers the appeal in respect of encl. 129.

[13] The appellant's solicitors responded *vide* a letter dated 10 November 2017 stating, *inter alia*, that the notice of appeal covers encl. 129 as well. This position was taken notwithstanding that the appellant had filed another notice of appeal dated 23 October 2017 ("the second notice of appeal"), specifically in respect of encl. 129.

[14] On 27 November 2017, the respondent filed the application to strike out the notice of appeal.

The Application

[15] Before us, learned counsel for the respondent submitted that the application to strike out the notice of appeal is premised on two grounds, namely:

(i) That the notice of appeal is fundamentally defective as it is not in compliance with the RCOA; and

(ii) That the notice of appeal is ambiguous.

[16] It was argued for the respondent that since there were two distinct orders of the High Court in the instant case, the appellant ought to have filed two separate notices of appeal. The respondent contended that the effect of the non-compliance is fatal and cannot be cured under r. 3A of the RCOA.

[17] The respondent relied on r. 5(3) of the RCOA which provides that a notice of appeal shall substantially be in Form 1 in the First Schedule and r. 5(4) of the RCOA which states that any appellant may appeal from the whole or part of the judgment or order and the notice of appeal shall state whether the whole or part only, and what part, of the judgment or order complained of. In this regard, learned counsel for the respondent took us through the notice of appeal where the appellant specifically stated that the appeal was against the judgment on the main trial. No mention was made as to whether the appellant is appealing against the dismissal of encl. 129.

[18] In support of the application, learned counsel had also relied on the decision of the Federal Court in *Deepak Jaikishan v. A. Santamil Selvi Alau Malay & Ors* [2017] 5 CLJ 641; [2017] 4 MLJ 11.

[19] In response, learned counsel for the appellant argued that a singular notice of appeal is very much allowed provided that the appellant sets out details of the decisions appealed against and particulars which was done in the case at hand.

[20] It was further submitted for the appellant that the case of *Deepak Jaikishan* and the instant case is 'like cheese and chalk' and that nowhere in *Deepak Jaikishan*'s case did the Federal Court say that if the decision is composite, the appellant must not file a single notice of appeal encompassing both decisions. Learned counsel for the appellant further sought to distinguish *Deepak Jaikishan*, where in *Deepak Jaiksihan*, there were other parties whereas the instant case involves the same plaintiff/respondent and the same defendant/appellant. Further, there were no costs separately ordered by the High Court in respect of the application to amend the defence.

[21] On the second ground, it was submitted for the appellant that there is no ambiguity or confusion as to what the appellant is appealing against. The so-called confusion is merely an imaginary confusion on the part of the respondent. Learned counsel for the appellant reiterated that the appellant is appealing against the entire decision of the High Court and that the notice of appeal is perfect to encompass the whole decision which is against the main trial and encl. 129. The second notice of appeal was filed on abundance of caution.

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Our Decision

[22] The question before us is whether the decision of the Federal Court in *Deepak Jaikishan* is applicable to the instant application by the respondent. Since the appellant sought to distinguish this case from *Deepak Jaikishan*, it is pertinent to examine the judgment of the Federal Court in *Deepak Jaikishan*.
B The Federal Court had referred to the decision of this court in *A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors* [2015] 4 CLJ 1016; [2015] 4 MLJ 583, hence we shall begin by looking at *A Santamil Selvi (supra)*.

C **[23]** In *A Santamil Selvi*, the appellants had filed a civil suit against nine respondents, who amongst others, included the serving Prime Minister of Malaysia ("the first respondent") and his wife ("the second respondent"). The claim was for the tort of conspiracy to cause injury by unlawful means. The respondents, through their various lawyers, filed eight separate applications pursuant to O. 18 r. 19(1) of the Rules of Court 2012 to strike
D out the appellants' writ and statement of claim on the common ground that the claim did not disclose any reasonable cause of action, was scandalous, frivolous and vexatious and/or an abuse of the court process. After hearing arguments, the learned High Court Judge reserved judgment. On 11 December 2014, Her Ladyship allowed the respondents' applications and
E struck out the writ and statement of claim. In the penultimate paragraph of her grounds of judgment, the learned judge pronounced:

> Accordingly Enclosures 17, 19, 25, 29, 30 and 33 are allowed with costs and Enclosure 21 and 23 are also allowed but with no order as to costs. The Writ and the Amended SOC dated 23.6.2014 against all the
F Defendants are hereby struck out.

[24] Dissatisfied with the decisions, the appellants filed an appeal to this court *vide* notice of appeal dated 8 January 2015. This sole and only notice of appeal reads:

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> TAKE NOTICE THAT A Santamil Selvi a/p Alau Malay @ Anna Malay, Kishen a/l Balasubramaniam, Menaga a/p Balasubramaniam and Reeshi a/l Subramaniam, being dissatisfied with the decision of the Honourable Justice Datuk Hasnah bte Dato' Mohamed Hashim given at the High Court Kuala Lumpur on the 11th day of December 2014, appeals to the Court of Appeal against the whole of the said decision granting the
H Order-in-Terms of all the Defendants' applications to strike out the Plaintiffs' claims under Order 18 rule 19(1) of the Rules of Court 2012.

[25] The appeal came up for hearing before this court when (except for the eight respondent, Deepak Jaikishan), the rest of the respondents by seven separate notices of motion applied to have the appeal struck out on the
I ground that the notice of appeal was bad in law. The applications were

premised on the argument that since seven orders were drawn up and seven sealed orders issued by the High Court, seven notices of appeal should have been filed by the appellants instead of only one.

[26] The respondents' applications to strike out the appellants' notice of appeal were allowed. In essence, this court held that:

(i) it was imperative for the appellants to set out the details of each and every one of the decisions that they were appealing against;

(ii) it was not sufficient for the appellants to state in general terms in a single notice of appeal that their appeal was against the whole of the decision without specifying the particulars of the decisions appealed against;

(iii) in the circumstances there was insufficient compliance with the statutory requirement to set out the details; and

(iv) the defect in the notice of appeal was fatal and could not be cured because it went to the jurisdiction of the court.

[27] As mentioned in para. [25], unlike the other respondents, the eight respondent, Deepak Jaikishan, did not apply to strike out the appellants' notice of appeal. Since there was no challenge by Deepak Jaikishan of the appellants' notice of appeal, the notice of appeal was held by this court to be valid against Deepak Jaikishan and the appeal was set down for hearing. At the outset of that appeal hearing, Deepak Jaikishan raised a preliminary objection ("PO") that since this court had held the notice of appeal to be invalid as against his co-defendants, the appeal against him should also be dismissed for the same reason. His PO was dismissed. This court held that Deepak Jaikishan should have applied by way of notice of motion to strike out the notice of appeal. This court proceeded to hear the appeal, set aside the High Court's decision that allowed Deepak Jaikishan's striking out application and ordered Deepak Jaikishan to file his defence.

[28] Deepak Jaikishan was granted leave by the Federal Court to appeal against the decision of this court, *inter alia*, on the questions: (a) whether the validity of a notice of appeal could be challenged by way of a PO; and (b) whether the filing of a single notice of appeal against the High Court's decision on eight separate interlocutory applications complied with the RCOA.

[29] The Federal Court answered the first question in the affirmative. Deepak Jaikishan's appeal was allowed. The decision of the High Court in striking out the appellants' claim was reinstated and reaffirmed.

[30] On the second question, the judgment of the Federal Court through His Lordship Zulkefli Ahmad Makinudin (then CJ (Malaya)) relevant to this application is reproduced below:

> [15] We shall now deal with the second question of law posed before us. The second question of law is whether the filing of a single notice of appeal in respect of a decision on eight separate and distinct interlocutory applications is in compliance with the procedural rules as set out under the RCA 1994.
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> [16] As alluded to, the eight defendant and all the other defendants in this case filed separate application for the striking out the plaintiffs' statement of claim at the High Court. The plaintiffs, having appealed against the decision of the High Court in allowing these applications, filed only a single notice of appeal against the decision of the learned judge of the High Court.
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> [17] It is to be noted that r. 5(3) of the RCA 1994 pertaining to civil appeal to the Court of Appeal provides that a Notice of Appeal shall substantially be in Form I in the First Schedule. The word 'shall' denotes that it is mandatory for the parties to comply with the provision under the said rule. We are of the view that the plaintiffs should have filed separate notices of appeal against the decision of the High Court in allowing the defendants' separate applications to strike out the plaintiffs' statement of claim.
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> [18] On this issue of the plaintiffs having to file a separate notice of appeal, useful reference can be made to the case of *A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v. Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors* [2015] 4 MLJ 583; [2015] 4 CLJ 1016. This is the very case where the Court of Appeal had heard the application by way of notice of motion of all the other eight defendants to strike out the plaintiffs' notice of appeal against the decision of the High Court of our current case. The Court of Appeal amongst others had made the following observations:
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> > [13] It is, therefore, a statutory requirement that the notice of appeal must be in the prescribed Form 1. We agree with learned counsel for the first and second respondent that the RCOA envisages two situations: one where a dissatisfied party appeals against one decision and second, where a dissatisfied party appeals against more than one decision. To that, we must add that it includes also a situation where a dissatisfied party appeals against part only of the decision of decisions given.
> >
> > [14] In our view, where the appeal is against one decision involving a single respondent or involving more than one respondent in a joint action, it will be in order for the appellant to state in a single notice of appeal that he is appealing against 'the whole of the said decision'. But where the appeal is against more than one decision arising from the separate interlocutory application made by different parties to the action, it is incumbent on the appellant to set out the details of the decisions in the notice of appeal.

> [15] In the present case, since more than one decision was given by the High Court in favour of nine different applicants arising from eight separate and distinct applications, it was imperative for the appellants to set out the details of each and every one of the decisions that they were appealing against. We do not think it was sufficient for the appellants to state in general terms in a single notice of appeal that their appeal was against the 'whole of the said decision' (in the singular) without specifying the particulars of the decisions appeal against.
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> [19] We are in agreement with the above views expressed by the Court of Appeal. The main purpose of r. 5(3) of the RCA 1994 is to allow the opposing parties to be able to answer their case respectively. The learned High Court judge had, in her grounds of judgment, explained in detail her decision in allowing the striking out application of each party in that separate interlocutory applications. The plaintiffs were in a position to identify the relevant points in the said judgment that they are dissatisfied with and thereafter filed a separate notice of appeal against all the defendants setting out the details of the decisions in the notice of appeal.
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> [20] It is also to be noted that each of the defendants in the High Court had filed eight separate applications to strike out the plaintiffs' statement of claim. All eight applications had different grounds in support of the respective application, different filing dates and even different counsels. The learned High Court judge delivered a single judgment encompassing all of the eight applications. It is our judgment by way of procedural rules there were eight separate orders made by the learned High Court judge. We would therefore answer the second question posed before us in the negative.

[31] We are mindful of the fact that in the case of *A Santamil Selvi (supra)*, leading to the case of *Deepak Jaikishan (supra)*, there were eight separate applications by eight different respondents whilst in the present case, there was only one interlocutory application and a main trial involving the same appellant and the same respondent.

[32] Nevertheless, in our view, the principle to be distilled from the decision of the Federal Court in *Deepak Jaikishan (supra)*, is not so much about the number of applications or the number of parties but whether there was a distinct and separate application resulting in a distinct and separate order by the court. If there was a distinct and separate application and a distinct and separate order of the court, then there ought to be a separate notice of appeal filed in respect of the separate and distinct order appealed against.

[33] In the instant case, there is no dispute that there were two separate orders issued by the court, namely an order in respect of the main trial where judgment was entered in favour of the respondent and another order in

A respect of the dismissal of the appellant's interlocutory application to amend the defence. Hence, we find that this application falls squarely within the principle enunciated by the Federal Court in *Deepak Jaikishan (supra)*, which we are bound to follow.

B **[34]** The fact that *Deepak Jaikishan*'s case concerns more than one respondent is thus irrelevant and cannot be the basis to distinguish the instant case from *Deepak Jaikishan (supra)*. As we understand it, the decision of the Federal Court on the question of law in *Deepak Jaikishan* binds us and it is trite that we cannot disregard the doctrine of *stare decisis*.

C **[35]** As for the second ground of the respondent's application, having perused the notice of appeal, we find that there is in fact some ambiguity as to whether the appellant is also appealing against the dismissal of the application to amend the statement of defence. We say so because whilst the notice of appeal states that the appellant is not satisfied with the whole decision of the learned judge dated 29 September 2017, it makes no mention D that the appellant wishes to appeal against the dismissal of encl. 129. What has been stated is that the appellant wishes to appeal against the whole decision allowing the respondent's claim. This is explicit in the wordings of the notice of appeal:

E > Perayu/Defendan … **tidak berpuashati dengan keseluruhan keputusan … pada 29haribulan September 2017, termasuk (tetapi tidak terhad) kepada Kandungan 129** (permohonan defendan untuk meminda "Pembelaan Terpinda Semula"…) **dengan ini merayu kepada Mahkamah Rayuan terhadap keseluruhan keputusan tersebut di mana tuntutan plaintif telah dibenarkan** dengan:
>
> F 1) Gantirugi pampasan sebanyak RM 150,000.00 …
>
> 2) Faedah ke atas jumlah Penghakiman pada kadar 4% setahun …
>
> 3) Faedah ke atas jumlah Penghakiman pada kadar 5% setahun …
>
> 4) Kos tindakan ini … (emphasis added)

G **[36]** The particulars on the dismissal of the application to amend is conspicuously absent in the notice of appeal as being the decision appealed against, as opposed to the main trial where the appellant had set out the particulars of the judgment appealed against. We therefore disagree with learned counsel for the appellant that the notice of appeal had set out the H details and the particulars of the decisions appealed against, which quite obviously does not include the dismissal of the amendment application.

I

[37] In the circumstances, we are unable to conclude that the respondent's objection that the notice of appeal is ambiguous and uncertain as to whether the appellant is appealing against the dismissal of encl. 129 as well, is devoid of merit. Neither could we conclude that the respondent's confusion as to whether the notice of appeal encompasses the appeal against the dismissal of the application to amend, is an imaginary confusion.

[38] By way of comparison, the notice of appeal in *A Santamil Selvi (supra)* states that the plaintiffs "appeal against the whole of the said decision granting the order-in-terms of all the defendants' applications to strike out the plaintiffs' claims …". The notice of appeal was certain that the appeal was against the granting of all of the defendants' applications to strike out. Yet, this court was of the view, which view was endorsed by the Federal Court in *Deepak Jaikishan (supra)*, that the notice of appeal was bad in law due to the plaintiffs' failure to file separate notices of appeal and to set out the details of each and every one of the decisions that they were appealing against.

Conclusion

[39] On the above considerations, we unanimously allow the respondent's application. The notice of appeal is consequently struck out.